

OCT 22 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON

U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN MANUEL DAVALOS,

Defendant - Appellant.

No. 02-50647

D.C. No. CR-02-0534-JSR

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John S. Rhoades, District Judge, Presiding

Submitted October 10, 2003**
Pasadena, California

Before: BRUNETTI, T.G. NELSON, and SILVERMAN, Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

John Manuel Davalos appeals his conviction under 21 U.S.C. §§ 952 and 960 for importation of marijuana. Davalos first argues the district court erred in precluding his duress defense. Davalos next contends that the district court erred in failing to order the government to produce evidence of third party culpability. We affirm the district court on both counts.

Davalos's first argument fails because he has not shown that he lacked a reasonable opportunity to escape. *See United States v. Contento-Pachon*, 723 F.2d 691 (9th Cir. 1984). Significantly, over five hours elapsed from when Davalos arrived at border patrol before he relayed to officials that he was driving the van under duress. Accordingly, the district court properly disallowed this defense.

Davalos also contends the district court erred in failing to order the government to produce evidence of third party culpability. Davalos wished to discover the evidence to support his defense of duress. Because the district court correctly precluded this defense, this evidence is no longer relevant and this argument fails. The district court is therefore affirmed.

AFFIRMED.